IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9687 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MULSING INDRASING RATHOD

Versus

STATE OF GUJARAT

Appearance:

MR TUSHAR MEHTA for Petitioner

MR SK PATEL Learned AGP for Respondent No.1,2 & 3.

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 20/10/2000

ORAL JUDGEMENT

1. The petitioner has filed the present petition under Article 226 read with Articles 14, 19, 21 and 22 of the Constitution of India challenging the order of his

detention dated 29.5.2000 recorded by the second respondent in exercise of powers conferred on him by Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 on various grounds.

2. The petitioner has mainly contended here that the representation submitted by the petitioner was not considered and disposed of within reasonable time and therefore, there was inordinate and unexplained delay in disposal of the said representation. Therefore, according to the petitioner, further detention of the petitioner may be treated to be illegal. Therefore the petitioner has prayed that the present petition be allowed and the order of detention against the petitioner be quashed and set aside and the petitioner be set at liberty forthwith.

3. On receiving the petition, rule was issued and Mr. S.K.Patel, learned AGP appeared for respondent nos.1,2 and 3. Ms. P.J.Davawala, learned Additional Senior Standing Counsel appeared for respondent no.4. I have heard learned advocates for the parties and have perused the papers. Ms. P.J.Dawavala, learned Addl. Senior Standing Counsel for Union of India has submitted an affidavit of Mr. R.N.Tripathi, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs and Public Distribution, New Delhi which is taken on record.

4. Learned Sr. advocate for the petitioner has argued at length that the petitioner has tendered a representation on 30.8.2000, the same has been turned down by the competent authority on 20.9.2000. Therefore, there was inordinate delay of about 20 days.

5. On this aspect of the case, if we go through the affidavit of Mr. R.N.Tripathi, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs and Public Distribution, New Delhi, it is very clear that the representation dated 30.8.2000 made by the cousin of the detenu was received by the Central Government on 11.9.2000 through the office of the District Magistrate, Surendranagr vide letter dated 7.9.2000. After considering the representation alongwith other relevant record the same was rejected by the competent authority in the Central Government on 20.9.2000. That decision of the Central Government was conveyed to Superintendent, Porbandar Jail on 20.9.2000 by telegram with a direction to convey the same to the detenu. It is therefore clear that the representation

was received by the Central Government on 11.9.2000 and it was disposed of on 20.9.2000. It is clearly indicated that there was a delay of 9 days in the disposal of the said representation. In the affidavit also, the delay has not been explained.

6. It would therefore be necessary to consider a decision of the Hon'ble Supreme Court in the case of Rajamal Vs. State of Tamil Nadu, reported in AIR 1999 SC 684 wherein, it has been laid down that the delay in considering the representation is fatal, particularly, when the delay is inordinate and has not been explained by the respondents.

5. Article 22(5) of the Constitution of India provides for an opportunity to the detenu to make submission to the competent authority. When there is a right given by the Constitution to the detenu for submission of representation against his detention, then there is corresponding duty conferred on the competent authority to decide the said representation. Article 21 of the Constitution of India provides for right of speedy disposal of the matter. The said right will also be available to detenu in case of representation tendered by him. In the present case, it is clear that representation was received on 11.9.2000 and it was disposed of on 20.9.2000. The said delay has not been explained to any extent.

6. The aforesaid decision of the Hon'ble Supreme Court goes to the extent that even when there is a delay of five days caused on account of absence of Minister from headquarter, it would not be sufficient to justify the delay in considering and disposing detenu's representation. In the present case, delay is on little different footing. However, there is no explanation tendered for delay in disposal of the said representation. This shows that there was inordinate delay of nine days in disposal of the said representation of the petitioner and the said delay has not at all been explained.

7. In that view of the matter, further detention of the petitioner will be illegal and consequently, the order of detention against the petitioner will be illegal. Therefore, the present petition is required to be allowed and the order of detention is required to be quashed and set aside.

6. In the aforesaid view of the matter, this petition is required to be allowed and the order of

detention is required to be set aside. Therefore, the present petition is allowed and the order of detention passed by the District Magistrate, Surendranagr against the petitioner on 29.5.2000 placed at Annexure-A to the petition is ordered to be quashed and set aside. The petitioner abovenamed shall be released forthwith, if not required in any other case. Rule made absolute with no order as to costs.

(D.P.Buch,J)

(vipul)